JD(ATL)–01–10
El Paso, TX

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

ALBERTSON'S LLC

and **CASE 28–CA–22546**

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 640, AFL–CIO,CLC[1]

Liza Walker–McBride, Esq.,
for the Government.[2]
Charles C High, Jr., Esq.,
for the Company.[3]
G. William Baab, Esq.
for the Union[4]

DECISION

Statement of the Case

WILLIAM N. CATES, Administrative Law Judge. This is a refusal to provide information case which I heard in trial in El Paso, Texas on December 1, 2009. The case originates from a charge filed on June 1, 2009, by United Food and Commercial Workers International Union, Local 540, AFL–CIO, CLC (Union). The prosecution of the case was formalized on August 31, 2009, when the Regional Director for Region 28 of the National Labor Relations Board (Board), acting in the name of the Board's General Counsel, issued a Complaint and Notice of Hearing (Complaint) against Albertson's LLC (Company).

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1 The Complaint reflects the Local Union as "640." The Certification of Representative in Case 28-RM-615 reflects the Local Union as 540. Except for the caption of the case, I have reflected the Local Union as "540" in accordance with the certification.

2 I shall refer to Counsel for General Counsel as Counsel for the Government and General Counsel as the Government.

3 I shall refer to Counsel for the Company as Counsel for the Company and shall refer to the Respondent as the Company.

4 I shall refer to Counsel for the Union as Union Counsel and refer to the Charging Party as the Union.

The Company, in a timely filed answer to the Complaint, denied having violated the Act in any manner alleged in the Complaint.

Specifically it is alleged that on or about April 30, 2009, the Union by letter requested the Company furnish the Union with certain information set forth in the letter and that since on or about April 22, 2009[5], the Company, by its counsel, has failed and refused to furnish the requested information. It is alleged by this conduct the Company has been failing and refusing to bargain collectively and in good faith with the exclusive collective–bargaining representative of certain of its employees in violation of Section 8(a)(1) and (5) of the National Labor Relations Act, as amended (Act).

The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross–examine witnesses, and to file briefs.[6] I carefully observed the demeanor of the two witnesses as they testified. I have studied the whole record, the post trial briefs, and the authorities cited therein. Based on more detailed findings and analysis below, I conclude and find the Company violated the Act as alleged in the complaint.

Findings of Fact

I. Jurisdiction, Labor Organization Status, Bargaining Unit and Supervisory Status

The Company is a Delaware limited liability corporation with offices and places of business in various states of the United States, including facilities located at 2200 North Yarbrough Drive , 9111 Dyer Street, and 7022 North Mesa Street in El Paso, Texas, (the Company's facilities), where it has been and continues to be engaged in the retail sale of groceries, meat, and related items. During the past twelve months ending June 1, 2009, a representative period, the Company purchased and received directly from points located outside the State of Texas goods valued in excess of $50,000. During the same period of time it also had gross revenues in excess of $500,000. The parties admit, and I find, the Company is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

Company Director of Labor Relations Danny Ma is a supervisor and agent of the Company within the meaning of Section 2(11) and (13) of the Act. Felipe Mendez is Secretary–Treasure for the Union and participates in labor negotiations including negotiations for the unit employees herein.

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[5] The Union orally requested certain information during a bargaining session on April 22, 2009.

[6] By letter dated January 13, 2010, Counsel for the Union advised that he would not file a brief but would defer to the brief filed by the Government.

II. The Facts

It is admitted the meat department employees at three of the Company's eight El Paso, Texas, facilities constitute an appropriate unit[7] for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. It is admitted the Union has been designated the exclusive collective–bargaining representative of the unit employees since at least July 19, 1993, and has been recognized as such by the Company. It is admitted that at all times since July 19, 1993, and, based on Section 9(a) of the Act, the Union has been the exclusive collective–bargaining representative of the unit employees.

The party's most recent collective bargaining agreement expired in April 2002. The parties thereafter participated in negotiations but to date have failed to arrive at a successor collective bargaining agreement. In January 2009 a representation petition, Case 28–RM–615, was filed and an election among the unit employees was held on February 12 and 13, 2009. The tally of ballots reflects a majority of the eligible voters favored continuation of representation by the Union. The results of the election were certified by the Board in late February 2009.

Following the RM petition being filed, but before the election was conducted, the parties engaged in various campaign activities. The Union's request for information from the Company centers around a Company campaign flyer dated February 6, 2009. Union Official Mendez testified the flyer was posted at the Company's three El Paso, Texas unionized stores around February 6.

In as much as the Union bases its information request, in large part, on the content of the Company's February 6, 2009, campaign flyer, I set the flyer forth in full:

> TO ALL MEAT DEPARTMENT ASSOCIATES
> AT STORES 932, 933 AND 934
>
> Recently, a majority of you told us that you no longer wanted the UFCW to represent you. That is not surprising since history shows the union has been less than diligent in these negotiations. You have been working without a new contract since 2002, and your last wage adjustment was in May 2001. The law requires that we give no wage increases without the union's agreement. We have been trying to get a deal done with the union but it has been difficult. You have seen the correspondence. The Company filed a charge with the National Labor Relations Board in 2005 because the union refused to meet and bargain in good faith, and we had to threaten to file a similar charge in 2008 before they would get back to us.

[7] The unit description is: All full–time and regular part–time journeymen and apprentices in the classifications of meatwrapper, meatcutter, butcher block clerk, butcher block manager, meat deli clerk and assistant head meatcutters employed by the Company at its stores located at 2200 North Yarbrough Drive, 9111 Dyer Street, and 7022 North Mesa Street in El Paso, Texas; excluding all other store employees, including but not limited to office clerical employees, head meatcutters (a/k/a meat department managers), service deli employees, direct store delivery clerks, guards and supervisors as defined in the Act.

Upon learning of your desire, we asked the Board to conduct a secret ballot election so you could vote "Yes" or "No" on keeping the UFCW. That election is scheduled for February 12 and 13. Between now and the election, you will hear many things. You will have to decide who to believe– the union or the Company. Some of you told me that the UFCW has said that without a union, the meat market managers will be free to fire people they do not like, and the Company will reduce the wages of every meat department here in El Paso. There is no factual basis for their claims.

Albertsons has a long track record of treating our associates well. Look at it. Talk to associates in our union–free stores. Listen to them. We treat all of our associates fairly and with dignity and respect. That is true whether they are union or union free. Our long–standing practice is that every discipline action is to be reviewed carefully by the Associate Relations team to guard against retaliation and favoritism. That will not change. Ever since 2002, when the contract expired, the arbitration clause expired, too. Since that time, we could have fired you without having to justify the reason to an arbitrator. Have we done so? Of course not.

As to wages, Albertsons has never reduced wages when store associates have voted to go non–union. I have never seen any other major grocery company do that. It is bad for morale and if they did, the employees would not trust them anymore. So, if the union is telling you that your wages could be decreased if you vote to be union free, all I can say is, don't believe everything the union tells you. They are trying to scare you. If our objective is to reduce El Paso meat associates wages and the union is what is stopping us, why would we continue to raise the wages of the union free meat associates in El Paso to the point that the gap is as much as $1.80 an hour? The union free meat associates were already being paid a higher wage in 2001 than the union meat associates. There would have been no reason for Albertsons to give them raises in 2004, 2005 and 2008 since the union wages were not being adjusted. Think about it.

All other Albertsons associates in El Paso and most other Albertsons associates are union–free. We believe they choose to be union free because they are treated fairly and enjoy good wages and benefits without a union. But this is your decision, so vote in the way you believe is best for you and your family. Please, do not make your decision based on false union claims and scare tactics. This will be a secret ballot. Take a hard look at the facts. And please exercise your right to vote. A majority of those who show up to vote will decide the outcome. You can vote in any of the three scheduled elections, even if it is not at your home store.

Thank you for your time. If you have any questions or concerns, please feel free to contact me at (602) 382–5323.

Danny Ma. February 6, 2009.

The first negotiating session, after the February 2009 election, was March 17 and the second, on April 22, 2009. Union Official Mendez testified that at the April 22 session he told Company Attorney Charles High, the Company's chief spokesperson, and Danny Ma, Director of Labor Relations the Company used information during the election campaign that compared the wages, benefits, and terms and conditions of employment of employees in its non–union stores with those at its unionized stores and the Union was requesting information

related thereto be provided to the Union. Mendez testified the campaign material he was referring to when he made his oral information request, on April 22,was Director of Labor Relations Ma's February 6, 2009, memorandum or flyer directed to unionized employees wherein Ma asked them to compare their wages, benefits and working conditions to those of the non–union employees. Mendez testified he specifically stated, "what we said that the Union was requesting, the information from non–bargaining unit stores in El Paso, in reference to wages, benefits, and terms or working conditions." According to Union Official Mendez Company Counsel High asked what the relevance of the information was and stated the Union needed to follow up with its request in writing for the Company to consider.

Union Official Mendez followed up on his April 22, 2009, oral information request by sending the Company, as Company Counsel High had requested, a written request for information on April 30. Mendez's letter addressed to Company Director of Labor Relations Ma outlined 37 types of information the union was requesting. Pertinent portions of Mendez's letter of request for information follows:

> Dear Mr. Ma:
>
> This letter is a follow up of our verbal request for information made during our last bargaining session held on April 22, 2009, in reference to non–bargaining unit employees and pursuant to the forthcoming collective bargaining process between the parties, the Union is hereby requesting the following necessary information in preparation thereof:
>
> 1. Individual rates of pay and classification for each bargaining unit employee;
> 2. Updated copies of Company rules, regulations and attendance policies applicable to new bargaining unit employees;
> 3. Copy of job and crewing standards;
> 4. Copy of job evaluations methods;
> 5. Copy of employee insurance plan or plans, employee summary plan description, monthly premium cost to the company, monthly premium cost to the employees. If the plan provides for family coverage and single coverage, for example, the appropriate monthly cost and cents per hour for each. A breakdown of how many employees have family coverage and single coverage, listed separately, etc.;
> 6. Copy of employee pension plan(s), employee summary plan description, and all Company's related cost, title and names of all pension plan trustees;
> 7. Copy of profit sharing plan, and all Company related costs;
> 8. Copy of 401K plan, and all Company related costs;
> 9. A list of paid holidays and the number of hours employees are compensated for each holiday;
> 10. A total breakdown of all job classifications and job descriptions, along with the rates of pay for each job;
> 11. Starting rates of pay for new hires and the progression schedule for wage increases;
> 12. A total description on the method of resolving employee grievances and/or complaints;
> 13. A total description on the method of earning paid vacation time, up to the maximum;

14. A total description of any formula or methods used to pro–rate paid vacation time;
15. A total description of Company policies regarding any unpaid leave of absence from work;
16. Total annual expense for FICA and unemployment compensation for the past two (2) years and year to date, listed yearly;
17. Total number of overtime hours worked by employees in the past two (2) years to date, listed yearly;
18. Total expense for all overtime hours paid to employees for the past two (2) years to date, listed yearly;
19. Most current list of names, social security numbers, addresses and phone numbers of all non bargaining unit employees;
20. A total breakdown of sex and age of each non bargaining unit employee;
21. The number of paid relief periods issued to employees in a normal scheduled worked day and duration of such relief period;
22. The method of the distribution of overtime opportunities within a work group or department when the entire group is not required to work the overtime;
23. The Company policy regarding equipment, tools and clothing issued to employees and the laundry for such clothing and the party responsible for the cost;
24. The method for determining a workweek for payroll purposes. (The beginning and ending of a work week);
25. The number of layoffs and the number of non bargaining unit employees affected by each layoff in the past two (2) years and year to date, listed yearly;
26. The current scheduled start times for all non bargaining unit shifts and night premium pay qualifications;
27. The Company policy regarding pay for holiday work and Saturday and Sunday work or scheduled days off in lieu of Saturday or Sunday;
28. The current method for promotions to higher paying jobs, shift preference, vacation preference, layoffs and job transfers;
29. Total number of straight time hours worked by the non bargaining unit in the past two (2) years to date, listed yearly;
30. Seniority list;
31. Number of weeks vacation each employee is eligible for year to date;
32. OSHA 300 logs;
33. Copies of employee handbooks and/or employee benefit booklets;
34. Declaration of all past practices not covered in employee handbook or employee benefits booklets;
35. Annual income statements and balance sheets for the last three (3) years and year to date;
36. Company documents showing the wages and benefits of all employees at all of its locations;
37. List names of all non–bargaining unit personnel with titles and areas of responsibility for this area location.[8]

[8] The Government does not seek in the Complaint to have the Company furnish the information requested in items number 4, 5, 12, 19 and 20.

Union Official Mendez testified he, on May 7, 2009, received a written response from Company Attorney High to his April 30, 2009, request for information. Company Attorney High's responsive letter in part states;

> This is in response to your letter of April 30, 2009, in which you request 37 different categories of information concerning Albertson's "non–bargaining unit employees." Although not clear from your letter, we assume the information you are requesting is for all non–bargaining unit employees in Albertson's eight El Paso stores, including both meat and non–meat employees, as well as managerial employees. If this is incorrect, please let me know.
>
> In you letter, you state that the requested information is "requested pursuant to the forthcoming collective bargaining process between the parties." This, we assume, is a reference to the ongoing negotiations between Local 540 and Albertson's for a new agreement covering associates in the three meat departments at Stores 932, 933, and 934 in El Paso, which are represented by Local 540

Company Attorney High further writes that after reviewing the request the Company does not believe the requested information "all of which is for non–unit employees, is needed by the Union to fulfill its statutory duties as the exclusive bargaining representative for the meat department associates at Stores 932, 933, and 934." Company Attorney High further writes, "information regarding the wages and benefits of non–bargaining unit employees is not 'presumptively relevant' and need not be produced by an employer absent a showing by the union that it is relevant to bargainable issues." Company Attorney High concludes his letter by expressing that the Company does not see the relevance of the information and until such time as the Union establishes the relevance the Company would deny the Union's request and not supply the information.

The day after the Union received Company Attorney High's responsive letter the parties met for bargaining. Union Official Mendez told High he had received High's letter and explained the information requested was relevant because the Company had compared the wages, benefits and working conditions of the non–unit employees with the unionized employees and the information was "necessary for these negotiations." Mendez said he again told High the requested information was "for the non–bargaining unit employees." Mendez said High told him the Company was not going to provide the information but did not say why. Mendez advised High if the Company did not provide the information the Union would go to the Board, to which High responded "the Union could do whatever they wanted to do." According to Mendez, nothing further was said about the information request or High's responses at this bargaining session.

Union Official Mendez testified he reiterated his request for the information at the parties May 21, 2009, bargaining session but was again told by High the Company was not going to provide the information.

On August 31, 2009, Union Attorney G. William Baab faxed Company Attorney High a letter stating he was enclosing "a statement concerning the relevance of individual items of the information request made over the table and reiterated in Felipe Mendez's April

30, 2009, letter to Danny Ma." The attachment to Baab's letter was a copy of his letter to the Board of that same date that explained to the Board the relevance of each item in the Union's request for information sent to the Company on April 30.

Company Director of Labor Relations Ma testified that when Union Official Mendez made his oral request for information at their April 22, 2009, bargaining session he asked for wages, benefits and working rules types of information for the "non–union El Paso meat associates." Ma stated that when Mendez followed up with his written request, as the Company had asked him to do, it was different in that it was not limited, for example, to the El Paso associates of the Company and the request was far more comprehensive than Mendez had orally made. Ma said he was "confused" about certain portions of the written request or "didn't have enough information to know what Mr. Mendez meant" by certain wording in his request. Ma acknowledged he did not tell Mendez he was confused nor did he ask Mendez what he meant by certain of his requests. Ma said the Company never received clarifying information from the Union even after Attorney High wrote the Union seeking an understanding of the request. Ma testified Mendez did however at their May 8, 2009, meeting ask where the information was and stated the information was relevant because the Company had raised the issues during the election campaign.

III. Pertinent Case Law Guidance

The principle has long been established that an employer is under a duty to provide a union which represents the employer's employees with information requested by the union which is relevant and necessary for the proper performance of the union's duties in representing the unit employees. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Manufacturing, Co*., 351 U.S. 149 (1956). A failure to fulfill the obligation to furnish relevant information upon request conflicts with the statutory policy to facilitate effective collective bargaining *Proctor & Gamble Mfg. Co. v NLRB*, 603 F.2d 1310 at 1315 (8th Cir. 1980). The duty to furnish information turns on the circumstance of the particular case. *Emeryville Research Center v. NLRB*, 441 F 2d 880 at 883 (9th Cir. 1971). Where a union's request is for information pertaining to employees in the bargaining unit that information is presumptively relevant and the employer must provide the information. *Madison Center*, 330 NLRB 1 (2000). Where the requested information pertains to employees outside the bargaining unit, the burden is on the union to demonstrate the relevance of the requested information. *National Broadcasting Company*, 352 NLRB 90, 97 (2008), and, *Disneyland Park*, 350 NLRB 1256, 1257 (2007). The key question in determining whether information must be produced is one of relevance. The standard for relevancy is a liberal discovery–type standard both for bargaining unit and outside the bargaining unit information. In both situations the sought after information need not necessarily be dispositive of the issue(s) between the parties but rather only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. *Bacardi Corp.*, 296 NLRB 1220 (1989). As the Board noted in *Disneyland Park* supra, to demonstrate relevance for non–bargaining unit information the government must present evidence either that the union demonstrated the relevance of the non–unit information, or, that the relevance of the information should have been apparent to the employer under the circumstances. Absent such a showing the employer is not obligated to

provide the requested information. The Board also noted in *Disneyland Park* supra at 1258 fn. 5, "The union's explanation of relevance must be made with some precision; and a generalized, conclusory explanation is insufficient to trigger an obligation to supply information. [citations omitted]"

IV. Analysis, Discussion and Conclusions

The Complaint, in subparagraph 6(a), alleges the request of the Union for the information set out in its letter dated April 30, 2009. Subparagraph 6(b) of the Complaint alleges that the information requested is necessary for, and relevant to, the Union's performance of its function as the exclusive collective bargaining representative of employees in the Unit. Subparagraph 6(c), without pleading the Union's verbal request made on April 22, 2009, alleges that the Company, since "on or about April 22," has failed and refused to furnish the Union with the requested information. Insofar as the request alleged in the Complaint is the written request of April 30, 2009, the Company's continuing refusal to provide the information began on May 7, 2009, when the Company replied to the Union's letter of April 30.

The Government argues that the evidence establishes the relevance of the information requested and that the Union communicated its need for the information at the bargaining table and in its attorney's letter of August 31, 2009. Furthermore, as pointed out in the Government's brief, the Union's request was a continuing request and, in this case as in *Barnard Engineering Co.*, 282 NLRB 617, 621-622 (1987), "the relevance of the requested information to the Union's performance of its statutory duties was fully clarified at the hearing."

The Company argues that "'[p]arity' and 'equivalency' are not legally magic words that can, in and of themselves, provide a basis for requiring an employer to furnish non-unit information." I agree; however, the record herein establishes that the basis of the Union's request was not magic words but the Company's own representations.

The flyer issued by the Company stated that the Company "has a long track record of treating our associates well … whether they are union or union free," but it then stated that unrepresented employees were enjoying higher wages, wages rates as much as $1.80 an hour higher, than unit employees, a significant inequity. The Company, citing Section 8(c) of the Act regarding statements that neither threaten nor promise and *Midland National Life Insurance Co.*, 263 NLRB 122 (1982), in which the Board held that it would not evaluate the truth or falsity of representations made in election campaigns, argues that "such statements [should not] now become subject to 'verification' in subsequent proceedings." Contrary to that argument, the issue herein is not whether the statements in the flyer were true, false, partially true, or partially false. The issue herein is relevance. The flyer placed the Union on notice that, although the Company claimed that it treated both "union and union free" employees "well," bargaining unit employees did not enjoy parity with unrepresented employees.

The Board, in numerous cases, has found information sought regarding nonunit employees to be relevant when the record established a basis for the request. See *Comar, Inc.*, 349 NLRB 342, 355 (2007); *Frito-Lay, Inc.*, 333 NLRB 1296 (2001), vacated 51 Fed. Appx. 482 (5th Cir. 2002); *Brazos Electric Power Cooperative, Inc.*, 242 NLRB 1016 (1979), enfd 613 F.2d 1100 (5th Cir. 1980). There is no requirement that the relevance of an information request be predicated upon representations made at the bargaining table. In *Frito-Lay Inc.*, supra, the union's information request relating to nonunit employees followed observations made by unit employees at other plants of the company. In *Brazos Electric Power Cooperative, Inc.*, supra, the request regarding nonunit employees was made after the union "received information" about a wage increase granted to nonunit employees. In this case, the Union's information came from the Company flyer. The Company cannot be heard to complain that the information sought as a result of the statements made in its flyer is not relevant.

I find, as explained below, the Government established that the Union demonstrated the relevance of the non–unit information it requested and the Government's evidence even established that the relevance of the non–unit information was, or should have been, apparent to the Company under the circumstances herein. A number of factors persuades me that both tests for relevance of non–unit information has been met. First, Union Official Mendez credibly testified that at the parties April 22, 2009, bargaining session he explained to Company Attorney High and Director of Labor Relations Ma the need and purpose for the requested information. Mendez told them that since the Company had, during the recent representation [RM] election campaign, asked its unionized employees in El Paso to compared their wages, benefits and terms and conditions of employment with those of its non–unionized employees the Union needed and was requesting the supporting information the Company was relying on for its claims. The parties were in active contract negotiations at that time for employees of the Company's three El Paso unionized stores. I am persuaded the Company knew, at that time, what information the Union was seeking and why the Union needed the information. Mendez even explained further that the requested information was for the non–bargaining unit employees at the other El Paso stores of the Company. Second, the Company surely knew, or should have known, the relevance and purpose of the requested information on April 22, 2009, in as much as the Company's campaign flyer asked that the unionized employees compare their wages, benefits and working conditions with those at its non–unionized stores and see how well the Company treated its non–unionized employees. The Company's flyer noted that in some cases the non–unionized employees were being paid $1.80 per hour more than like situated unionized employees. The Company's flyer also asked that the unionized employees consider the disciplinary practices, working conditions, and related benefits for its non–unionized employees and see that the Company treated non–unionized employees "fairly" with "good wages and benefits without a union." It should have been clear to the Company the Union was requesting the information in order to be better informed and/or prepared for negotiations at the bargaining table to, for example, possibly adjust proposals already made or propose new or different proposals in light of the wages, benefits and working conditions enjoyed by the Company's non–unionized employees. To the extent the Company contends the Union had a fixed bargaining position related to an acceptable successor agreement for the El Paso unionized stores and the information could not, or would not, have been useful to the Union, that contention is without

merit. Third, if any ambiguity existed as to exactly what information the Union was requesting at the bargaining session on April 22, such was cleared up by the Union's April 30, 2009, letter outlining, as the Company had requested, exactly what the Union was requesting. The Union's letter spelled out with specificity that the information requested related to, among other things; wages, employee classifications, Company rules, attendance policies, job and staffing standards/methods, 401k plans, profit sharing plans, pension plans, starting rates for new hires, break or relief times, overtime opportunities, required tools, uniforms and maintenance of the uniforms, shift schedules, vacation times, promotion policies, holiday and weekend scheduling and pay, safety logs and other items for the non–unionized employees in El Paso, Texas. The relevance of such requested information should have been obvious to the Company in the circumstances herein where the Company had requested comparisons be made between the treatment, benefits and working conditions of unionized versus non–unionized employees especially at a time when the parties are still in active negotiations toward a successor collective bargaining agreement for the unionized employees. Fourth, the Company knew the purpose for the requested information related to bargaining. Attorney High, in his May 2009 letter, seems to acknowledge as much in that he writes that where the Union made reference to forthcoming bargaining in their letter of request he assumed such was in "…reference to the ongoing negotiations between Local 540 and Albertson's for a new agreement covering associates in the three meat departments at stores, 932, 933, and 934 in El Paso…" Company Attorney High also seems to acknowledge the 37 items requested in Mendez's letter of April 30, 2009, were for the Company's non–unionized employees at its El Paso, Texas stores. There is no factual basis for the Company's assertion in its May letter that it would "assume" the Union's request also included information on managerial employees. It had already been made clear to the Company that it did not, in that Mendez had told the Company, as early as April 22, the Union only sought information for non–unit employees in El Paso. I am fully persuaded the Company knew what information the Union was seeking and the relevance should have been apparent to the Company, but, if it was not, the Union explained the relevance sufficiently for the Company to be obligated to supply the information. Fifth, assuming even in light of all the above, the relevance had not been established, the Union by counsel spelled out in great detail the specific relevance of each of the 37 requested items in a letter from Union counsel to Company Attorney High dated August 31, 2009. To the extent the Company would contend this August 31, 2009, explanation of relevance was untimely in that it came on the same day the Government issued the complaint herein is without merit. The obligation to provide relevant requested information is on going and continuing until the requested relevant information is provided. On and after August 31, 2009, the Company was placed clearly on notice as to the relevance of each item of the requested information.

Since April 30, 2009, the Union has requested, in writing, that the Company furnish certain relevant information. Since May 7, 2009, the Company has refused and continues to refuse to provide the information, and its refusal violates Section 8(a)(5) and (1) of the Act and I so find.

CONCLUSIONS OF LAW

By refusing on and after May 7, 2009, to furnish the Union the requested relevant information it sought, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Company has violated Section 8(a)(5) and (1) of the Act, it is recommended the Company be ordered to cease and desist, and to forthwith furnish the Union the information, found relevant, that it requested. It is also recommended the Company be ordered to post an appropriate notice to its employees in English and Spanish regarding its unfair labor practices and the action it is taking to remedy such practices.

ORDER

The Company, Albertson's LLC, El Paso, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing and refusing to furnish the Union, United Food and Commercial Workers International Union, Local 540, AFL–CIO, CLC, with information that is necessary for and relevant to the performance of its duties as the exclusive collective–bargaining representative for the employees in the following appropriate unit:

> All full–time and regular part–time journeymen and apprentices in the classifications of meatwrapper, meatcutter, butcher block clerk, butcher block manager, meat deli clerk and assistant head meatcutters employed by the Company at its stores located at 2200 North Yarbrough Drive, 9111 Dyer Street, and 7022 North Mesa Street in El Paso, Texas; excluding all other store employees, including but not limited to office clerical employees, head meatcutters (a/k/a meat department managers), service deli employees, direct store delivery clerks, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action:

(a) Furnish the Union the information it requested in writing on April 30, 2009, less items 4, 5, 12, 19 and 20.

(b) Post at its El Paso, Texas Stores located at 2200 North Yarbrough Drive, 9111 Dyer Street, and 7022 North Mesa Street copies of the attach notice in English and Spanish marked "Appendix." Copies of said notice, on forms provided by the Regional Director for Region 28, after being duly signed by the Company's authorized representative, shall be

posted by the Company and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Company to insure that said notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Company has gone out of business or closed the facilities involved in these proceedings, the Company shall duplicate and mail, at its own expense, a copy of the notice in both English and Spanish to all current and former employees employed by the Company since May 7, 2009.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Company has taken to comply.

Dated Washington, D.C., February 2, 2010.

William N. Cates
Associate Chief Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to forthwith furnish the Union, United Food and Commercial Workers International Union, Local 540, AFL–CIO, CLC, with the April 30, 2009, requested information that is necessary for and relevant to the performance of its duties as the exclusive collective–bargaining representative of the employees in the following unit:

> All full–time and regular part–time journeymen and apprentices in the classifications of meatwrapper, meatcutter, butcher block clerk, butcher block manager, meat deli clerk and assistant head meatcutters employed by the Company at its stores located at 2200 North Yarbrough Drive, 9111 Dyer Street, and 7022 North Mesa Street in El Paso, Texas; excluding all other store employees, including but not limited to office clerical employees, head meatcutters (a/k/a meat department managers), service deli employees, direct store delivery clerks, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, furnish the Union with the information it requested in writing on about April 30, 2009, (less items 4, 5, 12, 19 and 20).

ALBERTSON'S, LLC
(Employer)

Dated: _____ **By:** _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret–ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition,

you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue–Suite 1800, Phoenix, AZ 85004-3099
(602) 640–2160, Hours: 8:15 a.m. to 4:45 p.m.(MST)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (602) 640–2146